

June 19, 2020

To:
Clerk of the Supreme Court
1501 West Washington St., Room 402
Phoenix, Arizona 85007

From:

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Comments re Arizona Supreme Court No. R-20-0035 Petition to Amend the Procedures for Nominations for the Independent Redistricting Commission

The League of Women Voters of Arizona (LWVAZ) is opposed to some of the changes proposed in Arizona Supreme Court No. R-20-0035, Order Amending Rules 128-134 of the Arizona Rules of the Supreme Court on an Emergency Basis as submitted by the Honorable Robert M. Brutinel, chair of the Commission on Appellate Court Appointments (CACA) on April 2, 2020. These rules pertain to the Independent Redistricting Commission (IRC) nomination procedures.

For many years, the League of Women Voters has taken the strong position "...that democratic government depends upon informed and active participation at all levels of government. The League believes that governmental bodies must protect the citizen's right to know by...making public records accessible..."

The League also takes a special interest in the Independent Redistricting Commission. League members were involved in drafting and gathering signatures for Proposition 106, the bipartisan citizen initiative approved by Arizona voters in 2000 to create the IRC. The continued independence and integrity of the redistricting process is of the highest priority for the League of Women Voters of Arizona.

The IRC was established to counter the influence of partisan politics in redistricting and to conduct an independent and transparent process to draw legislative and congressional district maps. Those maps are used in the most treasured ritual of a democracy---voting. It is essential that the public have confidence in the maps and in the process used to to draw them.

Arizona citizens must know that they have full information about the IRC and that no secret agenda is unduly influencing the process.

The Commission on Appellate Court Appointments is charged with reviewing applicants and creating a pool of potential members of the Arizona IRC, which places a special burden on it to be open and transparent in its procedures for doing so. CACA has the constitutional responsibility to create a pool of nominees who are "...committed to applying the provisions of this section in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process." (Ariz. Const., Art.IV, Sec. 1(3).

The proposed revisions already are raising concerns about the impartiality of the CACA review of future IRC applicants. Done on an "emergency" basis to meet an annual deadline, they create the impression that something must be seriously wrong with the past process. In fact, there is no evidence that that is the case and that more confidential information would result in a fairer outcome. The 2011 IRC was generally praised for creating fair and balanced districts. Arizonans treasure their right to know what its government is doing. There are strong laws to ensure that is the case.

The proposed revisions create "confidential" (i.e., shielded from the public) information in three areas: (1) an apparently new confidential section on the application form; (2) information designated by third parties as "confidential"; and (3) personal notes and procedural emails created by members of CACA. These proposed rules make it more difficult for the public to trust the candidate review process and to be confident that the best candidates have been included in the pool of nominees. These revisions should not be adopted.

The purpose of the new, confidential section on the application form (Revised Rule 131(d)) is not defined. What information may be included here and declared confidential by the applicant? This provision only serves to raise suspicions among the public that they are not hearing the full story from applicants about their qualifications and why they are applying. Applicants for such a powerful and consequential position as IRC commissioner should not be able to conceal information about themselves. Previously, and reasonably, only the names and contact information for people serving as references for the applicant was withheld from the public.

The ability of a third party to submit comments and to designate them as confidential in Revised Rule 131(e)(1) is the most pernicious of the three new rules. It opens the door to mischief by dark money and special interests. Such influence would be concealed and would allow people of power and prominence to have their voices heard in disproportionate influence. A governor or a legislator or a president could put their thumb on the decision-making scales. Untrue and unsubstantiated comments could be submitted about a nominee and concealed from the public. And the names of individuals making comments also would be confidential, leaving the public with no way to know even who had provided information to CACA.

Placing personal notes and procedural emails into the confidential category (Revised Rule 131(e)(2)-(3)) makes the review process more opaque and creates questions about the impartiality and fairness of the CACA process. It gives commission members the ability to conceal information based on their interpretation of whether their email is procedural or substantive. It invites secrecy where openness and transparency should be the norm. Public records law is circumvented by this ruling. Typically the notes that a commission member generates about this process would be public records. There is no justification for this ruling.

Overall, these revisions create an undesirable precedent for rules governing this and other commissions. Secrecy is the enemy of the people. Do not start down this road.

The League also notes an inherent conflict of interest when Judge Brutinel both submits and approves the proposed changes. There is no independent judgement as to whether the changes are substantial or not. To make these revisions on an emergency basis only leads to further suspicion of motive.

In today's climate of mistrust of government agencies, it is critical that the independence, integrity and transparency of the redistricting process be preserved. The Commission on Appellate Court Appointments must not contribute to doubts about the IRC process by creating categories of secret information not available to the public.

LWVAZ strongly urges that the above proposed changes not be adopted permanently and that the original language on Rule 132 (2010) be retained.

Respectfully submitted,

League of Women Voters of Arizona